IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG DIVISION

ELECTRONICALLY FILED
May 11 2016
U.S. DISTRICT COURT
Northern District of WV

MORGAN NICOLE GERDON,

Plaintiff,

v. Case No. 1:16-CV-86 (Keeley)

BRANDON N. SOLOMON,
STEVEN B. SOLOMON,

Defendants.

COMPLAINT

1) Plaintiff, Morgan Nicole Gerdon, is a resident of the State of Virginia and has been at all times relevant hereto.

2) Defendant, Brandon N. Solomon, is a resident of the State of West Virginia and has been at all times relevant hereto.

3) Defendant, Steven B. Solomon, who is the Father of Defendant Brandon N. Solomon, is a resident of the State of West Virginia and has been at all times relevant hereto.

4) Jurisdiction is proper in this Court pursuant to 28 United States Code §1332 as this Court has original jurisdiction as the Plaintiff is a citizen of a State different than the Defendants and the amount in controversy in this case exceeds $75,000.00 exclusive of interests and costs.

5) Venue is proper in the Clarksburg Division of this Court as the cause of action accrued in Monongalia County, West Virginia.

FACTS:

6) Defendant Brandon N. Solomon is the son of Defendant Steven B. Solomon, and at all times relevant herein Brandon N. Solomon was under the age of twenty-one (21) years.

7) Defendant Steven B. Solomon is the owner of the lake house in or about Cheat Lake in Monongalia County, West Virginia (hereinafter "Cheat Lake house") wherein the Malibu Speedboat was housed, maintained and operated by both Defendants Brandon N. Solomon and Steven B. Solomon.

8) Defendant Steven B. Solomon permitted and encouraged Defendant Brandon N. Solomon to utilize the Cheat Lake house for pleasure, including parties where alcohol and intoxicating drugs were served, as well as, using the Malibu Speedboat for recreational purposes.

9) On May 25, 2015, Defendant Brandon N. Solomon invited numerous individuals, including Plaintiff, to the Cheat Lake house for recreational purposes.

10) At this function at the Cheat Lake house, Defendant Brandon N. Solomon ingested and imbibed various intoxicating drugs and alcohol causing him to be under the influence of alcohol and intoxicating drugs sufficient to impair his ability to operate the Malibu Speedboat in a safe and proper manner and caused him to be in violation of West Virginia State law.

11) While under the influence of alcohol and intoxicating drugs, Defendant

Brandon N. Solomon operated the Malibu Speedboat with eleven (11) passengers aboard the vessel who he had invited to the Cheat Lake house for the party.

12) Defendant Brandon N. Solomon, while under the influence of alcohol and intoxicating drugs, operated the Malibu Speedboat in an erratic and reckless manner and at an excessive speed causing the Malibu Speedboat to crash into the shoreline with great force and trauma to the passengers.

13) Defendant Steven B. Solomon had knowledge of the unlawful conduct at the Cheat Lake house on the day of the crash, including the use of alcohol and intoxicating drugs while Defendant Brandon N. Solomon was operating the Malibu Speedboat as Defendant Steven B. Solomon was at the premises at relevant times therein on May 25, 2015, and observed such conduct and tacitly and/or implicitly approved such unlawful conduct and did nothing to stop such unlawful conduct.

14) Defendant Steven B. Solomon was also aware of his son's propensity to use alcohol and intoxicating drugs as Brandon N. Solomon had done so in the past requiring intervention and this was well known to Defendant Steven B. Solomon.

15) Defendant Steven B. Solomon was also aware of his son's propensity to operate vehicles, boats and other motorized vehicles in a reckless and careless manner with disregard for passengers' safety and the safety of others as Brandon N. Solomon had done so in the past requiring intervention and this was well known to Defendant Steven B. Solomon.

16) As a result of the above described conduct by Defendants Brandon N. Solomon and Steven B. Solomon, Plaintiff Morgan Nicole Gerdon, who was a passenger on the Malibu Speedboat, was seriously and permanently injured, as were some of the other passengers in that vessel.

Count I--Negligence and Reckless Conduct Causes of Action:

17) The conduct of Defendants Brandon N. Solomon and Steven B. Solomon was negligent, grossly negligent and in reckless disregard for the safety of Plaintiff and the other passengers in the Malibu Speedboat.

18) Such negligent, grossly negligent and reckless conduct proximately caused or contributed to serious permanent injury and other damages to Plaintiff.

19) Such negligent, grossly negligent and reckless conduct, is sufficient under West Virginia law to support an award of punitive or exemplary damages.

Count II--Negligence and Negligent Entrustment and Permissive Use:

20) Defendant Brandon N. Solomon operated the Malibu Speedboat with permission of Defendant Steven B. Solomon.

21) Defendant Steven B. Solomon was negligent in entrusting Defendant Brandon N. Solomon with the Malibu Speedboat as well as allowing him to use the Cheat Lake house for such party activities where intoxicating drugs and alcohol were being served or used.

22) Upon information and belief, at all times relevant herein, the Defendant, Steven B. Solomon, was the owner or co-owner of the aforementioned 2005 Malibu Speedboat.

23) At all times relevant herein, the Defendant, Steven B. Solomon, had a duty to exercise reasonable care in entrusting the 2005 Malibu Speedboat to others and to refrain from entrusting it to anyone who would create a reasonably foreseeable risk of injury to others.

24) On or about May 25, 2015, the Defendant, Steven B. Solomon, was negligent, careless, and/or reckless in the entrustment of the Malibu Speedboat to the Defendant, Brandon N. Solomon, insofar as the Defendant, Steven B. Solomon, knew or should have known that the Defendant, Brandon N. Solomon, had a propensity to recklessly operate the vessel while under the influence of alcohol and intoxicating drugs that day as both alcohol and intoxicating drugs were being used at the Cheat Lake house as well as Steven B. Solomon's knowledge of Brandon N. Solomon's propensity to use such substances.

25) On or about May 25, 2015, the Defendant, Steven B. Solomon, was negligent, careless, and/or reckless in the entrustment of the Malibu Speedboat to the Defendant, Brandon N. Solomon, insofar as the Defendant, Steven B. Solomon, knew or should have known that the Defendant, Brandon N. Solomon, had consumed large quantities of alcohol and/or other intoxicating substances such that he was incapable of safely operating the vessel.

26) By his knowing entrustment of the 2005 Malibu Speedboat to Brandon N. Solomon on or about May 25, 2015, the Defendant, Steven B. Solomon, did authorize and

ratify Brandon N. Solomon's negligence, carelessness, recklessness, and illegal conduct, as well as, Brandon N. Solomon's disregard for the health, safety and welfare of the Plaintiff, Morgan Nicole Gerdon, and others.

27) The conduct of the Defendant, Steven B. Solomon, was in violation of West Virginia Code §20-7-1 *et. seq*. including §20-7-18(f) & (g), and constitutes negligence *per se*.

28) Such negligent, grossly negligent and reckless conduct proximately caused or contributed to serious permanent injury and other damages to Plaintiff.

29) Such negligence, negligent entrustment and permissive use, are sufficient under West Virginia law to support an award of punitive or exemplary damages.

Count III--Violation of Underage Drinking Statute:

30) Upon information and belief, at all times relevant herein, the Defendant, Brandon N. Solomon, was under the age of twenty-one (21) years.

31) On or about May 25, 2015, the Defendant, Steven B. Solomon, negligently, carelessly, and/or recklessly supplied alcohol to Defendant, Brandon N. Solomon, and/or permitted alcohol and controlled substances to be consumed by the Defendant, Brandon N. Solomon at Steven B. Solomon's house at Cheat Lake, and/or both acted in concert with each other in such unlawful manner, such that Brandon N. Solomon became intoxicated both legally and in fact, resulting in Brandon N. Solomon's driving the 2005 Malibu Speedboat

in an erratic and reckless manner and violating West Virginia Code §20-7-1 *et. seq.*, including but not limited to §20-7- 18(b), (f) & (g) , §20-7-18b(a), and §20-7-21. Such conduct constitutes negligence *per se.*

32) At all times herein Defendant Steven B. Solomon had a legal duty to prevent such unlawful conduct by a minor on his premises which he failed to do and also acted in concert with Defendant Brandon N. Solomon to further commit such violations and grossly negligent conduct.

33) Such conduct by Defendants Steven B. Solomon and Brandon N. Solomon proximately caused or contributed to serious permanent injury and other damages to Plaintiff.

Count IV--Negligent Alteration of Safety Device:

34) Upon information and belief, the 2005 Malibu Speedboat as originally sold was equipped with an emergency engine stop switch that would stop the engine of the Speedboat in the event that the operator was forced away from the helm of the Speedboat for any reason.

35) Upon information and belief, on or about May 25, 2015, or on a date prior to May 25, 2015, the Defendants, Brandon N. Solomon and/or Steven B. Solomon, negligently, carelessly, and/or recklessly removed or altered the emergency engine stop switch from the 2005 Malibu Speedboat involved in the incident described herein and/or failed to properly maintain the emergency engine stop switch.

36) Upon information and belief, had the emergency engine stop switch been

operational, the engine on the 2005 Malibu Speedboat would have automatically shut down at the time the Defendant, Brandon N. Solomon, lost consciousness and/or control while operating the Speedboat, and the force of the collision that resulted in the Plaintiff's injuries would not have occurred or have been greatly lessened.

37) Both Defendants, Steven B. Solomon and/or Brandon N. Solomon, had a legal duty under the common law and the Restatement of Torts 2d §324A, not to alter personal safety devices on the 2005 Malibu Speedboat as was done in this matter which increased Plaintiff's risk of harm.

38) This conduct by Defendants, Steven B. Solomon and/or Brandon N. Solomon, who knew or should have known that such emergency stop switch had been rendered inoperable, or both acting in concert with each other in such unlawful manner, caused or contributed to the Plaintiff sustaining serious and permanent injuries.

Count V--Family Purpose Doctrine and Agency Liability:

39) Defendant Steven B. Solomon is liable to the Plaintiff for all of her damages pursuant to the Family Purpose Doctrine as established under the law of West Virginia as Defendant Brandon N. Solomon was using, with permission, the 2005 Malibu Speedboat owned, individually or jointly, and/or controlled by his father, Defendant Steven B. Solomon, which 2005 Malibu Speedboat was furnished for the use and enjoyment to Defendant Steven B. Solomon's family, including Defendant Brandon N. Solomon.

40) Defendant Steven B. Solomon made available to Defendant Brandon N. Solomon, at the Cheat Lake house, the 2005 Malibu Speedboat and means of securing alcohol to be used on said premises or vessel, or kept alcohol at the house and on the boat, as well as other means of conducting such unlawful activities, was doing so as the agent of Defendant Brandon N. Solomon for such purposes and is vicariously liable for the Plaintiff's damages caused thereby.

Count VI-- Use of Premises for Unlawful Purposes:

41) Defendant Steven B. Solomon negligently and recklessly allowed the use of his Cheat Lake house for purposes violating the statutory and common law as set forth in Counts I through V, including allowing underage drinking and use of intoxicating drugs, allowing use of the Malibu Speedboat knowing or should have known it would be operated while Defendant Brandon N. Solomon likely would be under the influence of alcohol or intoxicating drugs, allowing an unsafe vessel to be kept for use at his premises and other such unlawful conduct making Defendant Steven B. Solomon liable for all Plaintiff's damages proximately caused or contributed by such negligent and reckless conduct occurring at said premises.

WHEREFORE, Plaintiff, Morgan Nicole Gerdon, seeks the following relief and damages, jointly and severally, from Defendants Brandon N. Solomon and Steven B. Solomon and their liability insurers:

a) All lawful damages recoverable under West Virginia law for compensatory damages, such as Plaintiff's hospital and medical expenses which now exceed $123,000.00, gratuitous nursing care, lost work opportunities and/or wages, out-of-pocket expenses related to Plaintiff's injuries, both past and future, in an amount to be determined by the jury;

b) General damages for humiliation, embarrassment, aggravation and inconvenience, emotional distress, permanent injury and loss of the enjoyment of life and other such damages, as recoverable under West Virginia law, both past and future, in an amount to be determined by the jury;

c) Exemplary or punitive damages in an amount to be determined by the jury;

d) Pre-judgment and post judgment interest;

e) Attorneys' fees and costs expended in this action; and,

f) Such other further general and specific relief as may become apparent as disclosed by discovery and as this matter progresses to trial.

PLAINTIFF DEMANDS TRIAL BY JURY
ON ALL COUNTS OF THIS COMPLAINT

Plaintiff, Morgan Nicole Gerdon,
By Counsel

/s/ David J. Romano

David J. Romano
W.Va. State Bar ID No. 3166
ROMANO LAW OFFICE
363 Washington Avenue
Clarksburg, West Virginia 26301
(304) 624-5600
romanolaw@wvdsl.net